

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$87,813.63, for which he was without fault, because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits for the period January 1, 2015 through December 7, 2019, without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$500.00 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On October 29, 2010 appellant then a 61-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on October 25, 2010, while he was in his postal truck, he was struck by another vehicle and experienced low back spasm and pain and numbness in the right buttock and leg while in the performance of duty. His retirement plan was listed as Federal Employees Retirement System (FERS). OWCP accepted his claim for L5-S1 lumbar disc herniation. Appellant stopped work on October 25, 2010. OWCP paid him wage-loss compensation on the periodic rolls effective January 10, 2011. Appellant retired effective June 30, 2011.

On July 5, 2011 OWCP sent a FERS/SSA dual benefits calculation form to SSA.

In a memorandum of telephone call (Form CA-110) dated January 26, 2015, appellant called OWCP and indicated that he was receiving age-related retirement benefits through SSA. OWCP informed him that they would send an inquiry to SSA to calculate the amount of the offset.

On February 4, 2015 OWCP sent a FERS/SSA dual benefits calculation form to SSA.

On April 24, 2017 the employing establishment advised OWCP that appellant was in the FERS retirement system and was entitled to receive SSA age-related retirement benefits while also entitled to and receiving wage-loss compensation benefits on the periodic rolls. It requested OWCP review his file to determine if his file qualifies for the FERS offset and subsequent reduction of compensation benefits.

On April 25, 2017 OWCP sent a FERS/SSA dual benefits calculation form to SSA.

On September 18, 2019 the employing establishment requested that OWCP review the case for possible dual benefits.

On October 11, 2019 OWCP sent a FERS/SSA dual benefits calculation form to SSA.

On October 29, 2019 OWCP received a completed FERS/SSA dual benefits calculation form from SSA wherein SSA advised that, effective January 2015, appellant reached normal retirement age and became eligible for SSA age-related retirement benefits. It noted that, since his retirement coverage was under FERS, his compensation benefits must be offset by any part of his SSA benefit that was calculated by using his federal employment earnings. SSA calculated SSA age-related retirement benefit rates with FERS offset and without a FERS offset from

January 1, 2015 through December 1, 2018. Beginning January 2015, the SSA rate with FERS was \$2,213.00 and without FERS was \$758.00. Beginning December 2016, the SSA rate with FERS was \$2,220.00 and without FERS was \$760.00. Beginning December 2017 and May 2018, the SSA rate with FERS was \$2,264.00 and without FERS was \$776.00. Beginning December 2018, the SSA rate with FERS was \$2,327.50 and without FERS was \$797.50.

On November 29, 2019 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculation of appellant's SSA offset overpayment from January 1, 2015 through December 1, 2018 and computed a total overpayment amount of \$87,813.63. This form indicated that from January 1, 2015 through November 30, 2016 appellant received an overpayment in the amount of \$33,576.92, from December 1, 2016 through November 30, 2017 he received an overpayment in the amount of \$17,568.13, from December 1, 2017 through April 30, 2018 he received an overpayment in the amount of \$7,407.30 from May 1 through November 30, 2018 he received an overpayment in the amount of \$10,497.76, and from December 1, 2018 through December 7, 2019 he received an overpayment in the amount of \$18,763.52.

In a January 15, 2020 letter, OWCP explained to appellant that his FECA compensation would be offset by his FERS/SSA age-related retirement benefits. It noted that he had received SSA age-related retirement benefits attributable to his years of federal service as an under FERS since January 1, 2015. OWCP informed appellant that, as of December 7, 2019, it would begin to offset his FERS/SSA benefits.

On January 29, 2020 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$87,813.63 had been created because appellant received SSA age-related retirement benefits from January 1, 2015 through December 7, 2019⁴ that were partially based on credits earned while working in the Federal Government, which constituted a prohibited dual benefit. It determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method, and advised him that he could request waiver of recovery of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills and canceled checks, pay slips, and any other records which support income and expenses. Additionally, OWCP further notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

On February 17, 2020 appellant completed an overpayment action request form and requested a precoupment hearing. In an attached statement, he noted disagreement that an overpayment occurred and the amount of the overpayment, requesting waiver because he was found to be without fault in the creation of the overpayment.

In a Form OWCP-20 completed on February 17, 2020, appellant reported that his total monthly income included \$2,120.00 from SSA for himself and \$798.00 for his spouse, FECA

⁴ The Board notes that a typographical error was made by OWCP in its January 29, 2020 preliminary determination as it indicated that the overpayment period ended on December 1, 2018, rather than on December 7, 2019. The FERS offset calculation sheet indicates that the overpayment was calculated for the period January 1, 2015 through December 7, 2019.

benefits of \$1,667.31, his wife's salary of \$1,428.32, and interest and dividends of \$266.39 resulting in total monthly income of \$6,280.02. He reported expenses totaling \$5,002.32. Appellant indicated monthly expenses of \$505.82 for rent, \$800.00 for food, \$400.00 for clothing, \$615.00 for utilities, and \$2,581.50 for other expenses.⁵ He also noted a monthly payment of \$100.00 to SSA for an overpayment. Appellant further noted a checking account balance of \$41,672.00, savings account balance of \$128,018.00, stocks \$239,640.00, Thrift Savings Plan (TSP) of \$326,600.00, Individual Retirement Account \$59,238.00, and his spouse's retirement fund of \$18,447.00. He attached financial information including a 2018 federal tax return, bank statements, utility bills, and credit card bills.

On June 5, 2020 appellant attended a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant's representative submitted a hearing brief dated July 4, 2020. He provided a summation of arguments regarding the responsibilities of OWCP in identifying an overpayment and issuing an overpayment determination. The representative asserted that the established OWCP procedure prior to September 2018 required that a CA-2201 (at fault) or a CA-2202 (not at fault) overpayment determination "must be released (along with an OWCP-20) within 30 days of the date the overpayment is identified."⁶ In this instance the overpayment was identified in January 2015⁷ and OWCP issued the overpayment determination on January 29, 2020, more than 30 days after the debt was identified. The representative argued that OWCP failed to follow its own procedures and therefore the overpayment should be reversed. Appellant acknowledged that in September 2018 OWCP's Federal (FECA) Procedure Manual changed and the mandatory language was replaced with "[w]here the debt is \$300[.00] or more (or not eligible for administrative termination), a Preliminary Overpayment Determination should be issued within 30 days of the debt identification."⁸ He asserted that OWCP's lack of proper action and follow through was cause of the overpayment.

By decision dated July 14, 2020, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$87,813.63 for the period January 1, 2015 through December 7, 2019, because it failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. OWCP further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. It required recovery of the

⁵ Appellant detailed other expenses as follows: cable television of \$252.00, trash removal of \$30.00, home insurance of \$134.00, auto insurance of \$252.00, auto taxes of \$47.50, gym membership \$36.00, prescription copays \$50.00, gasoline of \$240.00, cigarettes of \$540.00, personal necessities of \$400.00, entertainment of \$300.00, auto maintenance of \$50.00, and trip to see grandchildren \$250.00.

⁶ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Preliminary and Final Decisions*, Chapter 6.400(4)(a)(2) (September 2020).

⁷ In a CA-110 note dated January 26, 2015, appellant called OWCP and indicated that he was receiving regular retirement through SSA.

⁸ *Supra* note 6 at Chapter 6.300(5) (September 2020).

overpayment by deducting \$500.00 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.⁹ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.¹⁰

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.¹¹ FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA age-related retirement benefits earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.¹²

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$87,813.63, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period January 1, 2015 through December 7, 2019, without an appropriate offset.

The record supports that appellant received FECA wage-loss compensation for total disability beginning in January 10, 2011, and that he received SSA age-related retirement benefits beginning January 2015. As noted, a claimant cannot receive concurrent FECA compensation for wage-loss and SSA retirement benefits attributable to federal service for the same period.¹³ The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to his federal service commencing January 1, 2015. Thus, the record establishes that he received an overpayment of FECA wage-loss compensation.¹⁴

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to appellant's specific SSA age-related retirement benefits

⁹ 5 U.S.C. § 8102(a).

¹⁰ *Id.* at § 8116.

¹¹ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018).

¹² FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

¹³ 20 C.F.R. § 10.421(d); *supra* note 6; *L.D.*, Docket No. 19-0606 (issued November 21, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

¹⁴ *Id.*

that were attributable to federal service. SSA provided its rate with FERS and without FERS for specific periods January 1, 2015 through December 7, 2019. OWCP provided its calculations for each relevant period based on SSA's worksheet and determined that appellant received an overpayment in the amount of \$87,813.63. The Board thus finds that he received prohibited dual benefits for the period January 1, 2015 through December 7, 2019 totaling \$87,813.63.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁵

Recovery of an overpayment will defeat the purpose of FECA when such recovery would cause hardship to a currently or formerly entitled beneficiary because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses, and the beneficiary's assets do not exceed a specified amount as determined by OWCP.¹⁶ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁷ Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.¹⁸ An individual's liquid assets include, but are not limited to cash, the value of stocks, bonds, saving accounts, mutual funds, and certificate of deposits.¹⁹

Recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship in attempting to repay the debt or when an individual, in reliance on such payment or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.²⁰

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat

¹⁵ 5 U.S.C. § 8129.

¹⁶ 20 C.F.R. § 10.436(a)(b). For an individual with no eligible dependents the asset base is \$6,200.00. The base increases to \$10,300.00 for an individual with a spouse or one dependent, plus \$1,200.00 for each additional dependent. *Supra* note 6 at Chapter 6.400(2), (3) (September 2018).

¹⁷ *Supra* note 6 at Chapter 6.400.4(a)(3); *N.J.*, Docket No. 19-1170 (issued January 10, 2020); *M.A.*, Docket No. 18-1666 (issued April 26, 2019).

¹⁸ *Id.* at Chapter 6.400.4(a)(2) (September 2020).

¹⁹ *Id.* at Chapter 6.400.4(b)(3).

²⁰ 20 C.F.R. § 10.437(a)(b).

the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.²¹

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.²²

Evidence in the case record shows that appellant has income totaling \$6,280.02. Form OWCP-20 listed expenses as of \$505.82 for rent, \$800.00 for food, \$400.00 for clothing, \$615.00 for utilities, and \$2,581.50 for other expenses.²³ Appellant also noted a monthly payment of \$100.00 to SSA for an overpayment. He further noted a checking account balance of \$41,672.00, savings account balance of \$128,018.00, stocks \$239,640.00, TSP of \$326,600.00, IRA \$59,238.00, and his spouse's retirement fund of \$18,447.00.

Based upon the information provided on the Form OWCP-20, and evidence received after the hearing, appellant's household income totaled \$6,280.20 while his expenses totaled \$5,002.32. As his monthly income exceeds his monthly expenses by \$1,277.88, he does not need substantially all of his monthly income to meet current and ordinary living expenses.

The Board further finds that appellant has not established that recovery of the overpayment would be against equity and good conscience because it has not been shown, for the reasons noted above, that he would experience severe financial hardship in attempting to repay the debt, or that a valuable right had been relinquished, or that a position had been changed for the worse in reliance on the payment, which created the overpayment.²⁴ Therefore, OWCP properly denied waiver of recovery of the overpayment.

Because it has not been established that, recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP has not abused its discretion by denying waiver of recovery of the overpayment.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations provides in pertinent part: When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is

²¹ *Id.* at § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²² 5 U.S.C. § 8129.

²³ Appellant detailed other expenses as follows: cable television of \$252.00, trash removal of \$30.00, home insurance of \$134.00, auto insurance of \$252.00, auto taxes of \$47.50, gym membership \$36.00, prescription copays \$50.00, gasoline of \$240.00, cigarettes of \$540.00, personal necessities of \$400.00, entertainment of \$300.00, auto maintenance of \$50.00, and trip to see grandchildren \$250.00.

²⁴ *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.²⁵

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$500.00 every 28 days from appellant's continuing compensation payments.

In determining whether appellant could repay the overpayment through \$500.00 deductions from continuing compensation payments, OWCP took into account his financial information as well as factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize any resulting hardship, not necessarily eliminate it, while at the same time liquidating the debt in a reasonably prompt fashion.²⁶ The Board finds that OWCP gave due regard to the financial information provided and found that his monthly income exceeded monthly expenses by \$1,277.88. OWCP further applied its procedures, which require that an appropriate payment amount should be deducted in order to recover the overpayment within three years.²⁷ The Board therefore finds that OWCP properly required recovery of the overpayment by deducting \$500.00 every 28 days from appellant's compensation payments.

On appeal appellant asserts that the overpayment was identified in January 2015 and OWCP issued the overpayment determination on January 29, 2020 more than 30 days after the debt was identified. He argues that OWCP failed to follow its own procedures and its lack of proper action and follow through caused the overpayment. As explained, however, in September 2018 the Federal (FECA) Procedure Manual changed the mandatory language that the Form CA-2202 "must be released" within 30 days of debt identification to "should be issued within 30 days" of the debt identification.²⁸ Applying the updated Federal (FECA) Procedure Manual language applicable in September 2018, OWCP's debt identification on January 29, 2020 was not fatal to this overpayment decision.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$87,813.63, for which he was without fault, because he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period January 1, 2015 through December 7, 2019, without an appropriate offset.

²⁵ 20 C.F.R. § 10.441(a); A.S., Docket No. 19-0171 (issued June 12, 2019); *Donald R. Schueler*, 39 ECAB 1056, 1062 (1988).

²⁶ See *L.F.*, Docket No. 15-0489 (issued May 11, 2015) (the Board affirmed an OWCP hearing representative's denial of waiver of recovery of an overpayment because appellant and his spouse had over \$17,000.00 in their savings account, and as such his assets exceeded the specified resource base).

²⁷ *Supra* note 6 at Chapter 6.500.8.c (September 2018). These procedures further note that, if no response to the preliminary overpayment determination is received, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full (emphasis added) *id.* Chapter 6.500.8.c(1).

²⁸ *Supra* note 8.

The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$500.00 every 28 days from his continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board